



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

October 21, 2004

**REGISTERED MAIL**

RR 359 893 289 US

Paul Pittman  
Whatcom County Public Works  
River and Flood Division  
322 N. Commercial St., Suite 120  
Bellingham, WA 98225

Dear Mr. Pittman:

RE: **Order # 1734**

U.S. Army Corps of Engineers #200400254-- Water Quality Certification for construction of two sediment traps and associated structures on Swift Creek, Whatcom County, Washington.

The request for certification for proposed work in Swift Creek, Whatcom County, has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Alice Kelly at (425) 649-7145. Written comments can be sent to her at the Department of Ecology, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008, or at e-mail [akel461@ecy.wa.gov](mailto:akel461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays  
Section Manager  
Shorelands and Environmental Assistance Program

JS:ak:  
Enclosure

cc: Randel Perry, Corps of Engineers  
Barry Wenger, Ecology

Yvonne Oliva, Ecology  
Julie Klacan, WDFW



**IN THE MATTER OF GRANTING A  
WATER QUALITY**

**CERTIFICATION TO**

**Whatcom County Public Works**

in accordance with 33 U.S.C. 1341  
FWPCA § 401, RCW 90.48.260 and  
Chapter 173-201A WAC

) **ORDER # 1734**

) **Corps Reference # 200400254**

) Install two sediment traps in Swift Creek;

) excavate 75,000 cubic yards of material and

) install bank stabilization; located near Everson in

) Section 33, Township 40 N., Range 4 E.,

) Whatcom County, Washington.

TO: Paul Pittman  
Whatcom County Public Works  
River and Flood Division  
322 N. Commercial St., Suite 120  
Bellingham, WA 98225

On July 15, 2004 and September 2, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed by the US Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project entails construction of two sediment traps on Swift Creek, located in Whatcom County. Swift Creek is a tributary to the Sumas River, which flows north to the Fraser River in Canada.

The excessive sediment in Swift Creek is caused by a large, complex landslide in the upper watershed on Sumas Mountain. Approximately 120,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally-occurring elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These chemicals are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish. The movement of sediment downstream in Swift Creek contributes to water quality problems in the Sumas River.

The proposed project entails construction of two sediment traps, each with dimensions of 60 feet wide, 5 feet deep and approximately 1000 feet long and in-line with the current stream alignment. Bank stabilization will be installed. 75,000 cubic yards of material from below the Ordinary High Water Mark is planned to be excavated.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

**CONDITIONS OF ORDER # 1734 AND WATER QUALITY CERTIFICATION:**

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, water quality certification is granted to Whatcom County Public Works subject to the following conditions:

**A. No Impairment of Water Quality:**

- A1. Certification of this proposal does not authorize Whatcom County Public Works to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore nothing in this certification shall absolve Whatcom County Public Works from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. Swift Creek is classified as Class A and the criteria of that class apply. Turbidity in Class A waters shall not exceed more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU, or cause greater than 5 NTU increase over background when the background turbidity is 50 NTU or less.

**B. Material Management Plan:**

- B1. Before dredging of Swift Creek and/or construction of two sediment traps is authorized by this certification and administrative order, Whatcom County Public Works shall comply with the following conditions:
  - a) Develop a dredged material management plan that includes options for location of disposal of excavated material, measures to prevent unauthorized use of excavated material, and measures to prevent material from entering surface water, groundwater or wetlands.
  - b) Submit the plan to Ecology for review and approval. Copies of the plan shall also be submitted to Washington Dept. of Fish and Wildlife and the US Army Corps of Engineers.

- c) Once approval is obtained from Ecology, dredging of Swift Creek is authorized. Other related activities described in the Corps public notice dated July 15, 2004 (bank stabilization and grade control) may proceed prior to plan submittal and approval.
- B2. The dredged material from Swift Creek shall be placed in an upland location so that it does not re-enter state waters, including but not limited to streams, wetlands, lakes, rivers, estuaries, or marine waters, or any other waters of the state.

**C. Construction:**

- C1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., detention areas, silt fences, filter fences, etc.), shall be in place before starting excavation and grading.
- C2. During excavation and construction at the project site, Whatcom County Public Works shall take all necessary measures to minimize the alteration or disturbance of existing vegetation.
- C3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters.
- C4. Whatcom County Public Works shall provide notice to Ecology's Alice Kelly at least 3 days prior to the start of construction. Notification can take place by e-mail to [akel461@ecy.wa.gov](mailto:akel461@ecy.wa.gov), telephone to (425) 649-7145, fax to (425) 649-7098, or in writing. Notification shall also be provided to Ecology's Barry Wenger at the Bellingham Field Office at least 3 days prior to the start of construction. Notification can take place by e-mail to [bweng461@ecy.wa.gov](mailto:bweng461@ecy.wa.gov), telephone to (360) 738-6245, fax to (360) 738-6253, or in writing to 1204 Railroad Ave. Suite 200, Bellingham, WA 98225.

**D. Emergency/Contingency Measures:**

- D1. In the event Whatcom County Public Works is unable to comply with any of the permit terms and conditions due to any cause, the applicant shall:
  - Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Alice Kelly at (425) 649-7145.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- D2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

**E. General Conditions:**


- E1. For purposes of this Order, the term "Applicant" shall mean Whatcom County Public Works and its agents, assigns, and contractors.
- E2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- E3. The applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- E4. The applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- E5. The applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

- E6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
- E7. The applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- E8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- E9. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

**Appeal Process:**

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 10/21/04 at Bellevue, Washington.

  
Jeannie Summerhays, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington